

Appl. No. 10/633,799  
Amdt. Dated February 28, 2006  
Reply to Office Action of January 6, 2006

### REMARKS

The present application was originally filed with 22 claims. Claims 11-22 were previously cancelled in response to a restriction requirement. Claims 2 and 8 have been cancelled in this Reply. Claims 1, 3-7, 9 and 10 remain pending and at issue in the present application. Of the remaining claims, Claims 1 and 9 have been amended in this Reply.

After receiving a favorable "Notice of Panel Decision from Pre-Appeal Brief Review" in which one of the rejections put forth by the Examiner was overturned, a non-final Action was entered in the present case rejecting all claims. Of the pending claims remaining in the subject application (noting the cancellation of Claims 2 and 8), Claims 1, 3, 6 and 7 stand currently rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,857,941 to Hsu (hereafter "Hsu"). Claims 1, 3-7, 9 and 10 also stand rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,659,302 to Lin (hereafter "Lin"). Claims 1, 3-5 and 10 stand rejected under 102(b) as anticipated by U.S. Patent No. 6,098,834 to Hatsumoto (hereafter "Hatsumoto"). Claims 1, 3-7 and 9 have also been rejected under 102(e) as anticipated by U.S. Patent No. 6,935,536 to Tardif (hereafter "Tardif"). Finally, Claims 1, 3-6, 9 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Des. 375,655 to King (hereafter "King") in view of U.S. Patent No. 3,739,938 to Paz (hereafter "Paz").

Claim 1 has been substantially amended in this Reply. Claim 1, as amended, is believed to distinguish over all cited references. Claims 3-7, 9 and 10 each depend from Claim 1 adding further limitations and, therefore, also distinguish over the cited art. Applicants respectfully request reconsideration of all claims in view of these amendments and the discussion below.

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Amendments to Claim 1

Claim 1 has been substantially amended to add limitations which the examiner has not found in each of the cited references. Amended Claim 1 now reads as follows:

A beverage container comprising:

a base having inner and outer walls cooperating to define a thermally insulating vacuum space therebetween and defining a beverage-containing reservoir,

a cover assembly removably mountable on the base for closing the reservoir, the cover assembly comprising:

a cap positioned at an upper and outer surface of the cover assembly and defining a recess also positioned on the upper and outer surface and open to ambient when the cover assembly is mounted on the base, the cap having an aperture therethrough spaced from the recess,

a drain/drink passage opening to and communicating with the recess,

a vent opening providing communication between the drain/drink passage and ambient, the vent opening having an exit end exiting the cap at a location spaced from the aperture and from the recess, and

a valve assembly movable between an open condition providing communication between the reservoir and the drain/drink passage and a closed condition sealing the drain/drink passage from the reservoir, and

a manually operated actuator mechanism accessible through the aperture of the cap.

The limitation "having inner and outer walls cooperating to define a thermally insulating vacuum space therebetween" with reference to the base of the container has been added to Claim

1. Support for this amendment can be found in original Claim 2 (now cancelled) and on page 4 at lines 21-23, which states "inner and outer walls 22 and 25 may be formed of metal, such as stainless steel, and are spaced apart for cooperation to define therebetween a thermally insulating vacuum space."

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Further, the limitation which now requires the cap to be "positioned at an upper and outer surface of the cover assembly" has been added to Claim 1. Likewise, the recess is specifically limited to also being "positioned on the upper and outer surface" of the cover assembly. These amendments are supported by Figures 1 and 2 which illustrate the cap 110 as well as the recess 114 as components on the upper and outer surface of the cover assembly 40. The specification further supports the language, stating "the cover assembly 40 includes a cap 110, which may be of one-piece, molded plastic construction and has a generally cylindrical peripheral sidewall 111 having a sloping upper edge 112 and being closed at its upper end by a concave upper wall 113 having a deep recess 114 formed therein. . . ." (Page 9, lines 15-18).

A further limitation added to Claim 1 requires "a vent opening providing communication between the drain/drink passage and ambient, the vent opening having an exit end exiting the cap at a location spaced from the aperture and from the recess." This amendment is supported by original Claim 8 (now cancelled). It is also supported by Figures 5 and 6 showing the vent opening 119 in fluid communication with the drain/drink passage at the underside of the cover assembly and exiting the cap spaced from both the aperture and recess.

Finally, Claim 1 has been amended to remove superfluous language (e.g., "the cover assembly including") and to clarify the relationship of the various components to one another (e.g., "when the cover assembly is mounted on the base"). The claimed beverage container comprises three distinct components, i.e., a base, a cover assembly, and a manually operated actuator mechanism, while the cover assembly itself comprises four components, i.e., a cap, a drain/drink passage, a vent opening, and a valve assembly. The present claim structure is believed to make these relationships more apparent, as it seems this may have caused some

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confusion in examination of Claim 1. While the structure of Claim 1 is slightly different, substantively it remains unaffected by these particular form amendments.

Applicants contend that all of the amendments of Claim 1 are supported by the original specification, including the original claims, and the original drawing figures, and therefore no new matter has been added to the application.

#### Section 102 Rejections

Various of the claims have been rejected as anticipated by at least one of either Hsu, Lin, Hatsumoto, and Tardif. The following chart illustrates the application of each reference to original Claims 1-10 (X = rejected) under 35 U.S.C. 102.

Claim No.	HSU	LIN	HATSUMOTO	TARDIF
1	X	X	X	X
2	X		X	
3	X	X	X	X
4		X	X	X
5		X	X	X
6	X	X		X
7	X	X		
8		X		X
9		X		X
10		X	X	X

In order for a reference to act as a §102 bar to patentability, the reference must teach each and every element of the claimed invention. Kalman v. Kimberly-Clark Corp., 713 F.2d 760,

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771 (Fed. Cir. 1983). Without the required teaching of "each and every element" as set forth in the claims, it is improper for the Examiner to continue such rejections under §102(b). Applicants contend that none of the cited references teach "each and every element" of Claim 1, as amended, and therefore rejection under 102 is improper. Reconsideration is respectfully requested.

With respect to the limitation of "having inner and outer walls cooperating to define a thermally insulating vacuum space therebetween" of Claim 1, neither Lin nor Tardif discloses this feature. Lin is directed to a leak-proof lid for a coffee mug, while Tardif discloses a cap for a container such as a carafe. An insulating space for thermal control is neither disclosed nor rendered obvious by Lin or Tardiff.

Applicants contend that Lin and Tardif cannot support a rejection of Claim 1 under 35 U.S.C. 102, and respectfully requests reconsideration in light of the above discussion.

The added limitations requiring the cap to be "positioned at an upper and outer surface of the cover assembly" and the recess to also be "positioned on the upper and outer surface" of the cover assembly, are not disclosed in any of Hsu, Lin or Tardif.

The examiner has cited to the open bottom end 331 and the valve seat member 3 as "a recess" of the disclosed device. It is unclear what component the examiner is relying on to meet the limitation of a cap because the Office Action merely claims it is disclosed. Nonetheless, as the recess is defined by the cap and both are required to be on an upper and outer surface of the cover assembly, it is clear that Hsu does not disclose these limitations to support a 102 rejection. The recess 331 or 3 of Hsu are positioned on either a lower and inner surface (open bottom end 331) or a side and inner surface (valve seat member 3).

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The examiner has cited "the annular bottom of member 32" as disclosed in Lin as a cap defining a recess. Again, no attempt is made to identify a specific component of the reference corresponding to the cap of Claim 1. Also, as with Hsu, the "recess" of Lin is on a bottom and inner surface of the assembly, rather than an upper and outer surface as required by Claim 1. Nor is the "recess" of Lin open to ambient as further required by Claim 1.

With respect to Tardif, the examiner points to the cap thread 22 as a recess defined by base portion (cap) 18. Clearly, referring to Figure 3 of Tardif, neither the "cap" nor the "recess" are positioned on an upper and outer surface of the assembly, nor is the "recess" open to ambient—the examiner's claim of the thread 22 being open to ambient "when the cap is detached from the reservoir" is an unsupportable contention.

Applicants contend that Hsu, Lin and Tardif can not support a rejection of Claim 1 under 35 U.S.C. 102, and respectfully requests reconsideration in light of the above discussion.

The final added substantive limitation requires "a vent opening providing communication between the drain/drink passage and ambient, the vent opening having an exit end exiting the cap at a location spaced from the aperture and from the recess." As recognized by the examiner, neither Hsu nor Hatsumoto discloses this feature.

Hsu is directed to a cap assembly used for a container, such as the pitcher shown in Figure 9. The Hsu device is designed to direct liquids from a side opening, rather than an upper surface, of the pitcher through passage 33 of the cap assembly. There is no vent opening provided on the upper surface of the assembly to allow communication of passage 33 with ambient.

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Likewise, Hatsumoto discloses a cover 30 having a slant cover plate 31 with a spout 34, but no vent opening is provided. Because the recess of the Hatsumoto cap assembly comprises substantially the entire upper and outer surface, it would not be possible to provide a vent opening spaced from the recess.

Applicants contend that Hsu and Hatsumoto can not support a rejection of Claim 1 under 35 U.S.C. 102, and respectfully requests reconsideration in light of the above discussion.

#### Section 103 Rejection

Claims 1, 3-6, 9 and 10 stand rejected under 103(a) as unpatentable over King in view of Paz. Applicants contend that the combination of King and Paz fails to disclose the limitation of "a base having inner and outer walls cooperating to define a thermally insulating vacuum space therebetween and defining a beverage-containing reservoir," as required by Claim 1. Accordingly, Claim 1 distinguishes over the cited references.

Claims 3-6, 9 and 10 depend from Claim 1, merely adding limitations to the already allowable claim. Accordingly, Claims 3-6, 9 and 10 should also be considered to be in condition for allowance. Reconsideration of all pending claims is respectfully requested.

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### CONCLUSION

Claims 1-22 were originally pending in the present application. Claims 11-22 have been cancelled as being drawn to a non-elected invention. Claims 2 and 8 have also been cancelled, their limitations being added to the base claim. Of the remaining claims, the current Office Action has rejected all claims under 35 U.S.C. 102 and 35 U.S.C. 103(a). Claim 1 has been substantially amended to add further features which clearly distinguish the claimed invention from the cited art. All remaining claims, which depend from Claim 1, are also considered to distinguish over the cited art.

The arguments set-forth in the Remarks section above point out how Claims 1, 3-7, 9 and 10 distinguish over the cited references to Hsu, Hatsumoto, Tardif, Lin and the combination of King and Paz. Accordingly, applicant believes all claims are now in condition for allowance. Notice to that effect is respectfully requested at the examiner's earliest convenience.

Respectfully submitted,

By 

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